

RESOLUTION NO. 2015-23a

A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE PURCHASE OF EMERGENCY ALERTING SYSTEM EQUIPMENT FROM WESTNET, INC. FOR THE VILLAGE FIRE DEPARTMENT; PROVIDING FOR WAIVER OF COMPETITIVE BIDDING; AUTHORIZING EXPENDITURE OF FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 3.07(b) of the Village Charter, the Village Council desires to authorize the expenditure of Village funds for a capital project consisting of the purchase of emergency alerting system equipment (the “Equipment”); and

WHEREAS, Westnet, Inc. (“Westnet”) has submitted a proposal, attached as Exhibit “A,” to the Village for the Equipment; and

WHEREAS, the Village Council desires to accept the proposal and purchase the Equipment; and

WHEREAS, pursuant to Section 2-85 of the Village Code of Ordinances (the “Village Code”), the Village Council finds that it is impractical to competitively bid the Equipment and desires to waive competitive bidding requirements in order to be compatible and consistent with the City of Miami’s equipment since the Village utilizes the City’s Fire Dispatch Center; and

WHEREAS, the Village Council finds that the adoption of this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Westnet Purchase Authorized; Specification of Funds. That the purchase of the Equipment from Westnet as described herein is approved and authorized, subject to the condition that the cost of the Equipment shall not exceed \$115,000.00 The funding sources and amounts for the Equipment is hereby authorized and approved as set forth in the Village Manager's Memorandum accompanying this Resolution.

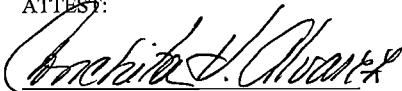
Section 3. Waiver of Competitive Bidding. That pursuant to Section 2-85 of the Village Code, competitive bidding procedures of the Village Code are hereby waived for the Equipment.

Section 4. Implementation. That the Village Manager is authorized to take any necessary action to implement the purposes of this Resolution.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 12th day of May, 2015.

ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY



VILLAGE ATTORNEY


MAYOR MAYRA PEÑA LINDSAY

**AGREEMENT BETWEEN
VILLAGE OF KEY BISCAYNE
AND
WESTNET, INC.**

THIS AGREEMENT ("Agreement" and/or "Contract") is made between and entered into on June 29, 2015 between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation (the "Village" or "Customer") and **WESTNET, INC.**, a California corporation ("Westnet" or "Provider") pursuant to which Village will purchase and Westnet will sell the equipment and services more fully described below. Customer and Westnet may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Provider and the Village have agreed to terms wherein Provider will provide and install a First-In Fire Station Alerting System for the Village's Fire Station(s); and

WHEREAS, the Village desires to engage the Provider to perform these services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Provider and the Village agree as follows:

1. Definitions.

- a. "Acceptance Tests" means those tests described in the Acceptance Test Plan.
- b. "Confidential Information" is any information disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if in verbal form is identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days of such disclosure. Confidential Information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Contract, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Contract; or (v) is explicitly approved for release by written authorization of the disclosing party.
- c. "Contract Price" means the price for the System, inclusive of freight and handling charges, as well as applicable state sales tax at the rate as stated

in Exhibit "C," but exclusive of any other applicable sales or similar taxes or tax rate changes.

- d. "Effective Date" means the date upon which the last party to sign this Agreement has executed it. "Equipment" means the hardware listed in the Statement of Work (Exhibit "C").
- e. "Final System Acceptance" means the Village's written acceptance of the total System pursuant to the terms of the Agreement.
- f. "Maintenance and Support Services" means the services described in Westnet's Maintenance and Support Agreement as reflected in Exhibit "G."
- g. "Post Warranty Period" is the period after the expiration of the Warranty (Exhibit "B").
- h. "Punch List" is a list of mutually agreed upon tasks that need to be performed to satisfy the terms of this contract (Exhibit "A-2").
- i. "Specifications" means the technical, design, engineering, operational, functional, and interface requirements of the System or, if the context so indicates, of the Software or Equipment, all as provided in this Agreement.
- j. "System" means the deliverables to be provided by Westnet under this Agreement and is comprised of the Equipment and services as described in Exhibits "A" and "C."
- k. "System Acceptance" means Westnet's successful completion of the Acceptance Tests.
- l. "Warranty Period" is the period as stated in Exhibit "B."

2. Exhibits.

- a. The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed.
 - i. Exhibit A Statement of Work, Delivery and Installation Verification Forms
 - ii. Exhibit B Warranty
 - iii. Exhibit C Contract Price and Deliverables
 - iv. Exhibit D Payment Schedule

- v. Exhibit E Acceptance Test Plan
- vi. Exhibit F Final System Acceptance Certificate
- vii. Exhibit G Maintenance and Support Statement of Work

3. **Scope of Services.**

- a. Provider agrees to provide and install the Equipment and other deliverables as described in the "Statement of Work" attached hereto as Exhibit "A," as well as provide the Maintenance and Support Services attached hereto as Exhibit "G."
- b. Provider also agrees to provide Services as may be further described in Exhibits "B" through "E."

4. **Term.**

- a. The term of this Agreement shall begin on the Execution Date and shall continue until the expiration of the warranty period as set forth in Exhibit "G."

5. **Compensation and Payment.**

- a. The amount of compensation to the Provider for the Services shall be based on the rates described in Exhibit "C." Payment to the Provider shall be made in accordance with the payment terms described in Exhibit "D." However, the total amount of compensation to the Provider for the Services shall not exceed \$117,883.74.
- b. Provider will submit invoices to the Village in accordance with Exhibit "D," and the Village will pay the amount due within thirty (30) days of receipt of a proper invoice.

6. **Default and Termination.**

- a. If either party breaches a material obligation under this Agreement, the other party may consider the breaching party to be in default. If a party asserts a default, it will give the breaching party a written notice of the default. The breaching party will have thirty (30) days thereafter to cure the default. If the breaching party fails to cure the default, then the non-breaching party may terminate this Agreement.
- b. The Village Manager, without cause and in his sole discretion, may terminate this Agreement upon thirty (30) calendar days written notice to the Provider. Upon receipt of said notice by the Village, Provider shall

immediately stop performing the Services unless directed otherwise by the Village Manager.

- c. In the event of termination by the Village, the Provider shall be paid for all work accepted by the Village Manager up to the date of termination.

7. Insurance.

- a. Provider shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Provider's insurance and shall not contribute to the Provider's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 8 and may be increased by the Village as it deems necessary or prudent.
- b. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- c. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Provider shall be allowed to provide any services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- d. Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- e. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

- f. **Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance), prior to the execution of this Agreement by the Village and prior to commencing any services. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The Provider shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of any services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.
- g. **Additional Insured.** Except with respect to Professional Liability Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from any services performed by or on behalf of the Provider in performance of this Agreement. The Provider's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Provider's insurance. The Provider's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- h. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Provider shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- i. The provisions of this section shall survive termination of this Agreement.

8. Nondiscrimination.

- a. During the term of this Agreement, Provider shall not discriminate against any of its employees or applicants for employment because of their race,

color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

9. Attorneys Fees and Waiver of Jury Trial.

- a. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- b. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

10. Indemnification/Limited Warranty.

- a. Provider's Limited Warranty is attached as Exhibit "B."

11. Notices.

- a. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: Key Biscayne Fire Department
 Attn: Marcos Osorio
 560 Crandon Blvd.
 Key Biscayne, FL 33149
 Fax: 305-365-8933

With a copy to: Stephen J. Helfman, Esq.
 Village Attorney
 Weiss Serota Helfman Cole & Bierman, P.L.
 2525 Ponce de Leon Blvd., Suite 700
 Coral Gables, Florida 33134

For The Provider: Westnet, Inc.
 Attn: Dawn Matheny
 15542 Chemical Lane
 Huntington Beach, CA 92649
 Fax: 714-901-5610

12. Governing Law.

- a. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

13. Entire Agreement/Modification/Authorization.

- a. This writing contains the entire Agreement of parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- b. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.
- c. The execution, delivery and performance of this Agreement by Provider have been duly authorized, and this Agreement is binding on Provider and enforceable against Provider in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

14. Public Records/Access and Audits.

- a. The Village Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Provider involving transactions related to this Agreement. In addition, the Provider agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.
- b. The Village may cancel and terminate this Agreement immediately for refusal by the Provider to allow access by the Village Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
- c. Notwithstanding the foregoing or anything else to the contrary, subject to the provisions of Chapter 119, Florida Statutes, the Village agrees not to disclose any confidential and proprietary information and trade secrets of Provider as discussed below in section 16.

15. Confidentiality.

- a. During the term of this Agreement, a party may provide the other with Confidential Information. Each party who receives the Confidential Information of the other party will: (i) maintain the confidentiality of such Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce such Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including informing its employees who handle such Confidential Information that it is confidential and not to be disclosed to others, but such precautions shall be at least the same degree of care that the receiving party applies to its own confidential information and shall not be less than reasonable care; and (iv) use such Confidential Information only in furtherance of the performance of this Agreement, Westnet's Maintenance and Support Agreement, or to otherwise support Customer in its use and maintenance of the System. Confidential Information is and shall at all times remain the property of the disclosing party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

16. Maintenance and Support.

- a. During the Post Warranty Period, Westnet will make Maintenance and Support Services available to the Village. The Village understands that it will be obligated to purchase such services at the time services are rendered unless the Village and Westnet have executed a Maintenance and Support Agreement. If the Village exercises its option to purchase extended Maintenance and Support, notice must be provided at least 30 days prior to the expiration of the Warranty Period. See Maintenance and Support Statement of Work (Exhibit G) for complete details.

17. Shipment/Risk of Loss.

- a. Westnet will pack and ship all Equipment F.O.B. to the delivery sites designated by the Village in accordance with the applicable packing and shipping instructions or, in the absence of such instructions, with best commercial practices to ensure safe arrival at the destination. Title to the Equipment shall pass to the Village upon completion of installation.
- b. Risk of loss for the Equipment shall pass to the Village upon delivery.

18. System Acceptance.

- a. After the Equipment is installed, Westnet will notify the Village in writing that it is ready to commence the Acceptance Test. Westnet and the Village will mutually agree on the date to commence the Acceptance Test per the acceptance test procedure of Exhibit "E." If the Village is unable or unwilling to participate in the Acceptance Tests within the on-site installation period, the Acceptance Test procedure will be conducted by an authorized Westnet representative with results shared in writing to the Village. When the System is fully operational based on the documented acceptance test procedure, the System will be deemed accepted as certified in Exhibit "F."

19. Delays.

- a. Neither party will be liable for its non-performance or delayed performance if caused by a "Force Majeure" which means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend the Project Schedule for a time period that is reasonable under the circumstances.

20. Nonassignability.

- a. This Agreement shall not be assignable by Provider unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Provider, and such firm's familiarity with the Village's area, circumstances and desires.

21. Severability.

- a. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

22. Independent Contractor.

- a. The Provider and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

23. Compliance with Laws.

- a. The Provider shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement.

24. Waiver.

- a. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

25. Counterparts.

- a. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

26. Use of Trademarks and Names.

- a. Except as expressly agreed to in writing, neither party may use the other party's name, logo, or trademarks, or any abbreviation of the other party's name, in any advertising, marketing campaigns, press releases, or communication with the press, without the specific prior consent of the other party. Each party must strictly follow the other party's instructions concerning use of the other party's trademarks.

27. No License of Intellectual Property.

- a. This Agreement does not grant to either party any license under any patents or other intellectual property rights of the other party. This Agreement does not grant either party the right to manufacture any of the other party's Software or Equipment.

Signed and dated this 29th day of June, 2015.

Village of Key Biscayne

By: [Signature]
Name: John C. Gilbert
Title: Village Manager
Date: 6/29/15

Westnet, Inc.

By: [Signature]
Name: Dawn Matheay
Title: VP Contracts
Date: 06/23/2015

SWORN TO AND SUBSCRIBED before me this _____ day of June _____, 2015

Signature of Notary Public, State of Florida

see attachment

Print, Type or stamp name of Notary Public.

Personally known to me, or produced identification

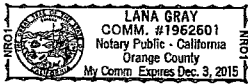
_____.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

Subscribed and sworn to (or affirmed) before me on this 23rd
day of June, 20 15, by _____
Dawn Marsha Matheny

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me



(Seal)

Signature Lana Gray